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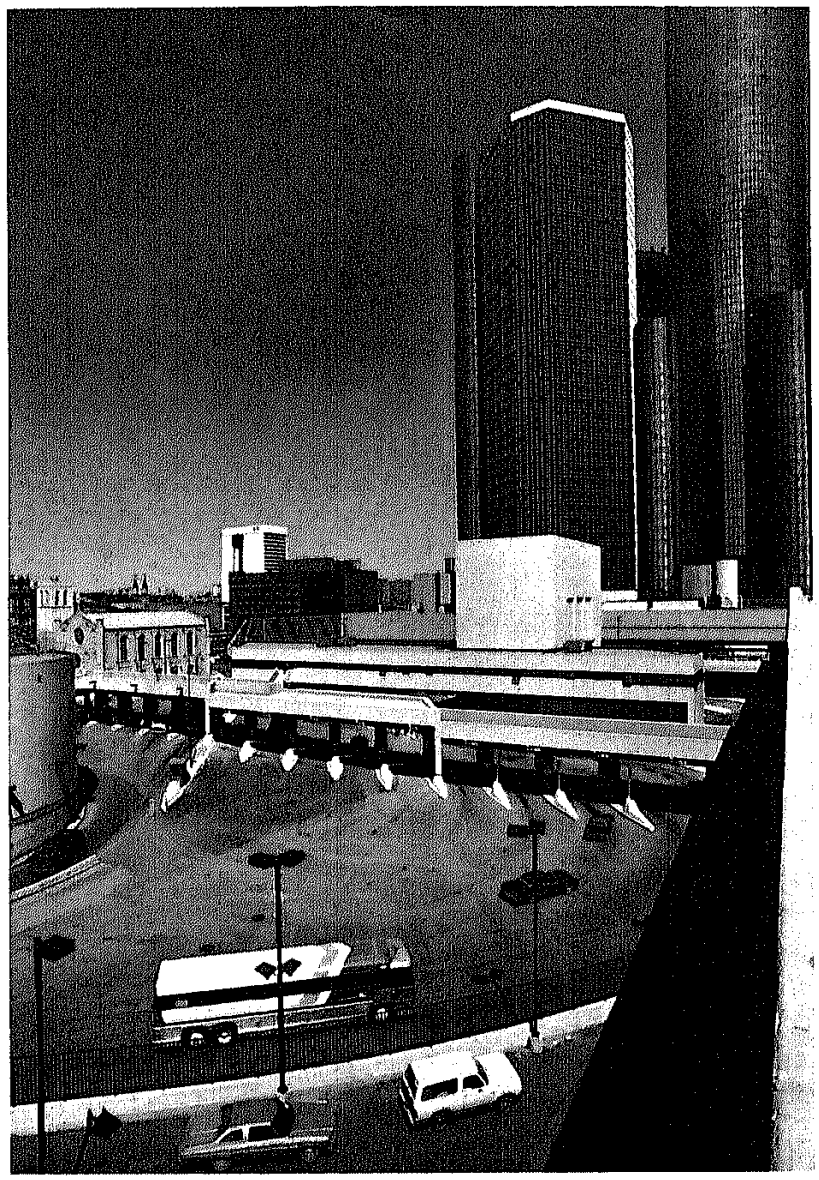

INS Reporter

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United States Department of Justice
William French Smith, *Attorney General*

Immigration and Naturalization Service
Alan C. Nelson, *Commissioner*

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Cover: More than seven million applicants for admission to the U.S. were processed at the Detroit-Canada tunnel in 1982. Pictured is the new plaze area completed in 1979, containing 10 inspection booths and the two-story secondary inspection building just beyond the inspection lane. Towering above the area is the Renaissance Center, a complex combining business, shopping and entertainment.
Photo: Courtesy Detroit-Canada Tunnel Corporation

A Balanced Approach to Immigration Reform

By Alan C. Nelson
Commissioner

Editor's Note: The Immigration Reform and Control Act of 1982, which passed the Senate last summer by a large margin of 80-19, but which failed passage by the House due to insufficient time before adjournment of the 97th Congress in December, was reintroduced in both Houses of Congress on February 17, 1983. The measures, S.529 and H.R.1510, introduced by Senator Alan Simpson, Chairman of the Senate Subcommittee on Immigration and Refugee Policy, and Congressman Romano Mazzoli, Chairman of the House Subcommittee on Immigration, Refugees, and International Law, respectively, are identical to those introduced in the previous Congress. Hearings on both bills were scheduled throughout the month of March and into April. Following is testimony presented by Commissioner Nelson on February 28, 1983, before the Senate Subcommittee on Immigration and Refugee Policy in support of S.529.

I am pleased to be here and to comment on S.529, the Immigration Reform and Control Act of 1983. It has been almost one year since I appeared before you and offered my comments on the Immigration Reform and Control Act of 1982, which passed the Senate on an overwhelming bipartisan vote of 80-19 but failed to pass the House before the end of the 97th Congress.

In this past year nothing has occurred which reduces the need for this legislation. In fact, the need has increased and will continue until positive action is taken by Congress and we have the added legislative authority necessary to gain control over the entry and presence of aliens in our country. For these reasons, Mr. Chairman, I wish to express my appreciation, and the appreciation of the Administration, for your prompt action in introducing this vital legislation.

This legislation, which represents a tremendous amount of work by the Chairman, the subcommittee, and others, is a well balanced approach to the multiple immigration problems that we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong equities in the United States, and provisions whereby the legitimate needs of employers may be met. It has the added advantage of providing a more efficient, workable law which can be implemented fairly.

The conditions which have led to our present problems in immigration are neither new or unusual. The United States has for many years presented an attractive lure to people from much of the world. The individual freedoms of its residents and the opportunity to better one's place in life has encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation of immigrants with all the benefits which people from every part of the world can provide.

We must recognize, however, that there are limits to the number of immigrants which the country can reasonably accommodate and most of all, immigration must be a controlled process accomplished under the provisions of law. The Immigration Reform Act of 1983 recognizes the historical role of the United States as the receiver of immigrants while placing the necessary controls on immigration.

As stated before, we believe the legislation achieves the balance necessary for fair and controlled immigration.

Through the placing of sanctions on the hiring of illegal aliens or those who are not authorized to work in the United States, the bill addresses one of the primary reasons aliens enter illegally or after legal arrival, violate the conditions of their admission.

By providing for the legalization of aliens who have resided in our society for several years, the bill recognizes the reality of this situation and presents a humanitarian and realistic approach. To attempt a mass deportation or to ignore this population as we enforce employer sanctions would be disruptive and contrary to our democratic principles.

The bill recognizes that employers may have legitimate short-term needs for foreign workers, especially as employer sanctions are implemented in agriculture or other industries, and provides the means by which workers may be allowed to enter if their entry will not create a disadvantage for domestic workers.

Although we have discussed many of these points before, I would now like to comment on the specific provisions of S.529.

Illegal Immigration

While the actual number of illegal aliens is unknown, the most frequently cited numbers range from 3.5 to 6 million. The presence of large numbers of illegal aliens in the United States and the continuing entry of others is an unacceptable situation and has destroyed much of the confidence and respect which the law deserves. Immigration must be a controlled and orderly process which reflects the best interests of our nation.

Employer Sanctions

A cornerstone of the bill is the sanctions which would be imposed on the knowing hiring of aliens not authorized to work in the United States. Although there are other reasons for illegal immigration, employment is the most compelling. We feel that this provision is absolutely essential to gaining control of our borders; only through this means can we remove the magnet which attracts so many illegal aliens to our country.

The bill makes it unlawful to knowingly hire, recruit, or refer for employment an alien not authorized to be employed in the United States, and makes it unlawful to continue to employ an alien hired after the enactment of the statute, knowing that the alien is not authorized to work in the United States. The bill requires that a person who hires, recruits, or refers an individual for employment must complete a form for each individual

and attest, under penalty of perjury, that the persons' right to be employed has been determined through an examination of documents which identify the individual and show that he or she is eligible to be employed in the United States. An individual who seeks employment in the United States must complete a form and attest, under penalty of perjury, that he or she is a United State citizen, or an alien who has been admitted for lawful permanent residence, or an alien who has been authorized for employment.

The Administration believes that these provisions are appropriate as a means of controlling illegal immigration to the United States while safeguarding civil rights. Equality of employment opportunity for United States citizens and lawful permanent residents is not diminished by this bill. The recordkeeping requirements of the bill balance the burden of additional paperwork with the need to provide employers with a means to prove that they have complied in good faith.

The bill provides a penalty structure based on the principle of progressive penalties which includes civil fines, injunctive remedies, and criminal penalties. Civil fines may be assessed only after notice has been provided and a hearing, if requested, has been conducted before an officer designated by the Attorney General. Repeated violations, or the failure to pay civil fines, will be brought before the appropriate United States district court.

Employment Eligibility Verification

A reliable means of determining employment eligibility is fundamental to employer sanctions. However, the Administration is opposed to the creation of a national identity card or system. We believe that the use of existing documentation provides an effective means for verifying eligibility and screening illegal aliens from participating in the work force. The bill adopts this pattern of eligibility verification but requires that within years of enactment the Presihall implement such changes as are necessary to establish a secure system of employment eligibility. That is a reasonable approach which will allow us an opportunity to evaluate the efficiency of relying on existing documentation and to determine what, if any, improvements are appropriate and feasible.

We would also note that the Administration is very conscious of the problem of document fraud, and we have worked to improve the security of existing documentation provided by federal, state, and local governments. The Immigration Service has cooperated with the Social Security Administration (SSA) and other agencies to reduce fraudulent claims in various entitlement programs. In addition, the Service's Fraudulent Document Laboratory and enforcement officers continue to work with state and local agencies regarding false or fraudulently secured documentation.

Legalization

The provisions of S.529, which allow the legalization of specified aliens who are in the United States illegally, are a realistic and humane response to a circumstance which we intend not to allow to recur in the future.

The bill will allow permanent residence to be granted to aliens who have been in the United States illegally prior to January 1, 1977. Temporary residence may be granted to aliens who have been here illegally prior to January 1, 1980, and to Cubans and Haitians who have been in the United States on or after specified dates and are known to the Immigration Service. Aliens who initially qualify for temporary residence may apply after three years to have their status changed to permanent resident if they continue to reside in the United States and remain eligible under the other provisions of law.

Aliens who do not meet the standards for admission to the United States, and whose residence would be contrary to the public interest, would not qualify for permanent or temporary residence. This includes aliens who have been convicted for any felony or three or more misdemeanors committed in the United States and aliens who have assisted in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, aliens who are not able to overcome the "public charge" exclusion of the Act will not be eligible for legalization.

The legalization provisions of S.529 are designed to insure that only aliens who are and will be productive members of our society can qualify for residence.

Benefits to Permanent and Temporary Residents

Aliens who are granted permanent residence under this provision are not eligible for three years for financial assistance furnished under Federal law. Aliens who are granted temporary residence are also ineligible for assistance during the period of temporary residence and three years after they are adjusted to permanent resident status.

Block grant assistance to States is provided to offset costs incurred by them in providing assistance to legalized aliens, when it is required to meet emergency subsistence or health needs of those individuals, and when it is required in the interest of public health.

Implementation of Legalization

The proposed legislation provides that aliens who believe they qualify for residence may apply for this benefit during an 18 month period beginning on the date of enactment. It further provides that arrangements may be made with qualified voluntary agencies for the purpose of making the provisions of law known to the public, and for the purpose of receiving applications for residence.

The Service will be given the task of legalizing a great number of aliens in a relatively short period of time. Extensive planning has been done since the Administration's Omnibus Bill was introduced in 1981. Our planning has been based on a number of assumptions or goals.

1) The program should not disrupt the normal business of the Service more than is absolutely necessary.

2) The program should provide a simple, non-threatening method for aliens to obtain information concerning their eligibility and to file applications.

3) Applications should be processed to completion as quickly as possible.

4) The procedures should guarantee to the extent possible that only eligible aliens receive benefits under the law.

A comprehensive implementation plan has already been developed incorporating these principles, and the Service is confident that the legalization program contemplated by S.529 can be fairly and efficiently administered.

Recommendations

As the Attorney General has already indicated, the Administration supports the concept of legalization as provided in S.529. We do have certain recommendations however, which we feel will make those provisions more workable.

Rather than an application period which will begin on the date of enactment and run for 18 months, we would recommend a 12-month application period to commence no sooner than three months after enactment. Such a delay in the receipt of applications is essential to allow the Service time to publish regulations, enter into the necessary contractual arrangements, begin the public information campaign, and make other preparations.

As a corollary to this, the statute should also contain language which would protect prima facie eligible aliens from deportation or exclusion during the first three months after enactment.

Temporary Foreign Workers

The Administration supports the goals of S.529, which is to protect domestic workers from adverse impacts due to foreign labor, and to provide a legal means for the entry of temporary foreign workers when the need is clearly shown and that need cannot be met by domestic workers. This will be extremely important if we are to have sanctions against the hiring of illegal aliens, and to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, as they make the transition from dependence on illegal workers to reliance on domestic workers.

Unlawful Transportation of Aliens

S.529 would amend Section 274 of the Immigration and Nationality Act to make it unlawful to bring an undocumented alien to the United States, even if that alien is presented to an immigration official and regardless of whether that alien is allowed to remain in the United States in parole status. This will resolve the problem created by the court decision in *U.S. v. Anaya*, et al., No. 80-231-CR-EPS, where persons who had transported Cubans in the Mariel boatlift were found not to have violated Section 274.

Exclusion of Undocumented Aliens

S.529 wisely restricts the right to an exclusion hearing to documented aliens. Aliens lacking entry documents would be subject to summary exclusion by an immigration inspector under proper supervisory control, similar to the existing procedures for crewmen and stowaways. There would be no administrative or judicial appeal in these cases. However, aliens who indicate a fear of persecution in the country where they last habitually resided based on race, religion, nationality, membership in a particular social group or political opinion, will receive full and fair hearings to adjudicate their asylum claims.

This important provision will assist us greatly in handling the continuing flow of undocumented people and would be crucial in dealing with any future mass arrivals of visaless aliens.

Asylum Procedures

It is not surprising that proposals dealing with asylum occupy such a prominent part of your bill. There is a strong concern in Congress and in the Administration that the present asylum system has been shown to be seriously defective. The defects that have come to light since the enactment of the Refugee Act are not the result of any misdrafting, or misdirection; they are simply the result of a quantum leap in the numbers of persons who have applied for asylum. At the time of this hearing, there are approximately 86,000 asylum applications pending before the Immigration and Naturalization Service, exclusive of those received from Cuban and Haitian boat arrivals. New applications are filed at the rate of 2,800 per month.

One difficulty we have with this section is the limitation on the number of immigration judges. The Administration has calculated that it would take a *minimum* of fifty trained asylum officers to handle just asylum claims even under expedited procedures. Therefore, the 70 immigration judges provided under S.529 to handle all types of administrative review, including asylum, would be woefully inadequate.

Another difficulty is that during the two year transition period, none of the current immigration judges could hear asylum cases even if they were selected for permanent service. We believe these former "special inquiry officer" should be permitted to make asylum determinations after receiving specialized training.

Otherwise, it is our view that the revised asylum proposals contained in S.529 would allow for a fair, impartial determination of asylum claims, while at the same time avoiding the perplexing delays which have so often developed in adjudicating applications under the Refugee Act of 1980. Adoption of such proposals is essential to any comprehensive immigration reform bill.

United States Immigration Board

We support the provisions in Sections 122 and 124 and would join with the Attorney General in recommending only relatively minor additions or modifications to avoid statutory restrictions that would hamper the Department's ability to manage the workload.

Specifically we recommend that the

statutory limit of 70 immigration judges be removed, that current immigration judges be permitted to make asylum determinations once they have received specialized training in that area, that the jurisdiction of the United States Immigration Board should be capable of expansion by regulations of the Attorney General, and that the "withholding of deportation" provisions of section 243(h) of the Immigration and Nationality Act, should be repealed to eliminate confusion over a parallel asylum process.

The Immigrant Admissions System

S.529 proposes several changes in the system through which immigrants are admitted to the United States. It creates separate preference systems for family members and the immigration of workers or "independent" immigrants. The creation of two preference systems in place of the current single-track system clarifies the separate goals of family reunification and economic growth/cultural diversity, and eliminates some of the inequities and confusion sometimes generated by the current system.

Similarly, the reordering of preferences and the change in the emphasis given each preference within this two-track system will clarify priorities and reflect more closely the needs of the United States in terms of reunifying immediate families and bringing in persons who will benefit the country economically and culturally. S.529 retains the current first, second, and fourth preferences for family reunification, althogh the second preference is restricted to spouses and *minor* unmarried sons and daughters of the permanent resident aliens.

S.529 does not continue the current fifth preference for brothers and sisters of adult U.S. citizens other than to clear the existing backlog of applicants in this category at a rate of 10 percent of the numerically restricted family visas each year, plus any numbers not used in the higher family reunification preferences.

Overall Cap and Numbers

S.529 allows immediate relatives and most special immigrants to immigrate without numerical restriction within the 425,000 worldwide total, 350,000 family reunification, and 75,000 independent immigrant limits. While we support some limit on immigration and, in fact, find this to be a desirable goal, we have reservations concerning a cap on total immigration.

With a cap, increased immigration in these traditionally unlimited groups is of necessity at the expense of immigration in the family and independent preferences and from lower-demand countries. To the extent that immigration of immediate relatives and special immigrants continues to increase, the opportunity for others to immigrate will become increasingly limited. This trend will be especially true for those persons in countries sending over 20,000 numerically exempt immigrants a year, since this excess would be subtracted from the 20,000 per country limit for numerically restricted immigration during the next year.

After reviewing the laws governing legal immigration, the Administration concluded that the existing laws are basically rational and fair, and that changes in the preference system bear little relation to the urgent problem of illegal migration. More specifically, we have had reservations about placing the immediate relatives of U.S. citizens within an overall cap as, over time, such a change could limit the opportunity to reunite families in this country, a purpose historically animating our immigration laws. We do however, favor increasing the country limits of Mexico and Canada to 40,000 each.

Labor Certification

Both the Administration and S.529 recognize the inadequacies of the present labor certification system which has been criticized as being too slow and complicated. Your bill would provide a streamlined alternative to the present individual certification process by allowing the Department of Labor to certify shortages or over-supply of U.S. workers in certain occupations, using labor merket information without reference to particular job openings. Presently, an employer is able to obtain labor certification by advertising a specific job opening and being unable to fill that position with a U.S. worker. S.529 would allow the Department of Labor to expand the existing "Schedule A" list of precertified occupations and to issue labor certification without reference to a specific job opening.

Students

S.529 would require a foreign student in the United States to depart the country and reside in the country of his or her nationality or last foreign residence for two years before he or she could immigrate to the United States. This requirement could be waived in the case of students in certain fields of study if they were offered teaching, research, or technical positions. There is, however, a limit of 1,500 waivers per year which could be granted to teachers and 4,500 which could be granted to those in research or technical fields.

We note with regard to these provisions that the placing of numerical limits on the waivers granted would require the Service to establish a rather complicated accounting and allocation system to control the number of waivers granted each year in each of the two categories. Additionally, it has been our experience that waiver provisions are not abused and that the absence of a numerical limit would not result in an excessive number of applications being granted.

For these reasons, it is recommended that the numerical limits on waivers be eliminated.

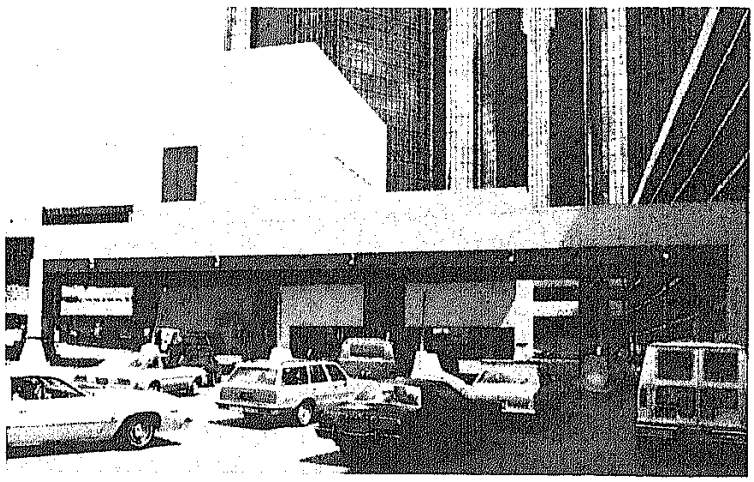
G-4 Special Immigrants and Nonimmigrant Visa Waiver

S.529 also addresses the problem of employees of international organizations and their dependents who often spend many years in the United States. It would provide special benefits for some of these. The bill also provides for nonimmigrant waivers for visitors from some countries. We support these provisions.

Conclusion

In conclusion, I again want to ex-

press my appreciation to the Chairman for the introduction of S.529 and the early hearing schedule which was established. As Commissioner of the Immigration and Naturalization Service, I am particularly aware of the critical need for the reforms contained in this legislation. Those reforms provide both the vehicle and the opportunity to rededicate ourselves to the fair and firm enforcement of our immigration laws. The Immigration and Naturalization Service looks forward to working with you and all the members of the subcommittee in that endeavor. ■



The Detroit tunnel inspection lanes are overshadowed by the Renaissance Center in the background. The smaller building immediately beyond the inspection booths houses the secondary area.

Detroit—A Major Port of Entry

By Steven M. Hurst
Supervisory Immigration Inspector
Detroit, Michigan

The port of Detroit, Michigan is, in terms of the annual number of applicants for admission, one of the largest ports of entry on the northern border. Inspectional activity in Detroit is infinitely varied. It is a high volume land/border port linked beyond the Detroit River to Windsor, Canada by a tunnel and a bridge. It is also a seaport for ocean class vessels and for fresh water ships plying the Great Lakes, as well as an air port of entry with two international airports. In addition, Immigration Inspectors engage in prelanding (preclearance) inspections on a Canadian island in the Detroit River.

An Immigration Inspector stationed in the motor car city is exposed to the greatest array of inspections possible. It is not uncommon for inspectors to participate in land, sea, air and prelanding inspections in a single day. Because of this diversity, Detroit has long been regarded by Service administrators as an excellent training port for both trainee and journeyman inspectors. Variety contributes to a challenging and stimulating working environment. All phases of inspections occur in Detroit routinely, making the port a microcosm of the Service's wide-range of inspectional responsibilities.

The City

The intense level of port activity is reflective of Detroit's geography and economic base. Detroit is a highly industrialized, densely populated, urban area located in southeastern Michigan. It is home to five and one-half million people. The city is situated on the Detroit River which connects Lake Erie to Lake Huron. It is the port of entry used by travellers from eastern Canada, southern Ontario, Canada, and the northeastern United States in their journeys to southern and western sections of the United States. The city is bordered on the east by southern Ontario, one of Canada's most populous areas, and is often the most convenient port for residents of such major Canadian cities as Ottawa, Toronto, and Hamilton.

The area is heavily industrialized and the port is strategic to the flow of international commerce. Detroit's Canadian sister city, Windsor, although much smaller in population, is also highly industrial. Both cities are centers of automobile manufacturing. Three American automobile corporations maintain manufacturing facilities in both Windsor and Detroit.

Applications for entry by nonimmigrants for business purposes are constant, and approximately 4,000 resident alien commuters apply for admission daily. Port activity is also affected by the populations of southeastern Michigan and southern Ontario, which are diverse in ethnicity and multinational in origin.

The Tunnel

The busiest inspection station in Detroit is located at the opening of the Detroit-Canada Tunnel. The tunnel consists of a two lane roadway, approximately a mile in length, which has been in operation for more than 50 years. Inspectors refer to the tunnel as "the tube". It is the only international automobile, bus, and truck tunnel in the United States.

The inspection station at the tunnel is the nerve center of the entire port's inspection operations. A new plaza area, containing 10 inspection booths,

All secondary examinations at the tunnel are conducted in this area. In addition, all bus passengers undergo inspection at the booths located in this building.

and a two story secondary inspection building were completed in 1979. Each inspection booth is heated and air-conditioned, and eech is equipped with a phone system permitting communication between the booths and wtih secondary officers.

Applicants requiring secondary examination are referred to a vehicle area located about 20 yards from the primery inspection area. Officers are alerted to each referral by an alarm system or by phone. The U.S. Customs Service maintains a cargo inspection area for trucks about one-half mile from the plaza. Trucks are referred to this area after the drivers and pessengers clear immigration inspection.

Even-numbered auto lenes are operated by immigration Inspectors. Odd-numbered lanes are staffed by Customs Inspectors. Inspectors alternate working primery and secondary. Usually an officer works primary for one-half hour and is then relieved to work secondary for one hour. No pedestrian traffic is permitted at the tunnel except during special events such as the internetional marathon run.

The immigration secondary facility is housed on the first floor of the two story inspection building. All secondary examinations are conducted in this area, and all bus passengers are required to disembark and undergo inspection at booths located inside the building. Separate inspectional areas are maintained for local Windsor-Detroit buses, and for charter and scheduled buses.

The first floor contains a supervisor's office, two interview rooms, and a squad room. The supervisor's office is equipped with an intercom phone network connecting U.S. border agencies to their Canadian counterparts. In addition, the office has direct computer access to alien records located in the Central Office in Washington, D.C. In Fiscal Year 1982, applications for admission at the tunnel totaled 7.1 million.

The second floor of the inspection building houses the offices of the Immigration Inspector In Charge, the Assistant Immigration Inspector in Charge, and the secretarial staff. Port operations are directed, coordinated, and administered from these offices. A large, fully equipped treining-conference room is used by the port training officer to conduct classroom training required by the Immigration Inspector's Training Program, and to cross-train U.S. Customs Inspectors. Port administrators have employed audio-visual equipment to produce films for training purposes.

The second floor also contains the offices of the port intelligence officers. There are three fundamental responsibilities assigned to the intelligence office: port intelligence gathering; refugee adjustments; and ADIT processing and quality control. Two inspectors are designated as intelligence officers. They serve six month tours of duty in this capacity.

A City of International Events

The tunnel opens on the American side of the river in the midst of Detroit's central waterfront area, an area that has undergone vest redevelopment in recent years. Immediately adjacent to the east of the entrance is the Renaissance Center. The "Ren Cen" has become the symbol of Detroit's committment to urban development. It is a complex containing five towering columns of ultra-modern glass and steel, the largest of which is a 72-story hotel. The center also combines business, shopping, and entertainment facilities.

To the west of the tunnel, along the waterfront, are located in succession, the Ford Auditorium, home of the Detroit Symphony Orchestra; Hart Plaze, the city's central park which contains the famous Noguchi fountain and a huge sunken pavilion; Cobo Hall and the Joe Louis sports arena, which hosts numerous national and international expositions, conventions, and sporting events.

The location of the port in the center of Detroit's modern water-front, with such a concentration of large-scele entertainment facilities, has caused a number of inspectional experiences that are unique to inspectors in Detroit. For example, in June 1982, the International Grand Prix came to the city. Although the race course encircled the inspection area, it did not interfere with the tunnel traffic and the inspections process. However, inspectors found themselves working primary, inspecting vehicles, while Formula One race cars roared by at top speeds only a few yards away.

As exemplified by the Grand Prix, Detroit is a city of internetional events. Each autumn the Detroit *Free Press* sponsors an international marathon. The entrants begin the course in Windsor, Canada, run through the tunnel, and complete the race in Detroit. Inspectors feel ambivalence,

possibly horror, as hundreds of people storm through the port of entry. All the entrants, however, are inspected prior to the race and wear appropriate identification tags.

During the summer a series of ethnic festivals are held at Hart Plaza, and each July the two cities of Detroit and Windsor co-sponsor the Freedom Festival. These festivals attract representatives from ethnic groups throughout the U.S. and Canada, in addition to thousands of visitors from all parts of the world. The visibility of the inspector is probably not higher at any time, and his demeanor, attitude, and professionalism probably receive no greater international scrutiny and evaluation than during these events.

The Role of the Inspector

Festivities such as these, occurring in such close proximity to the port, delineate the social, political, and administrative roles of the inspector. The Detroit inspector represents not only the Service and the federal government, he also serves as a civic goodwill ambassador. If an applicant's initial impression of the country and of the society is formed on the basis of the encounter with the Immigration Inspector, such is also true of first impressions of the city. The inspector in Detroit is acutely aware of this additional sensitive representative responsibility.

The somewhat paradoxical roles of the inspector, as both a diplomat and enforcer of the immigration laws, are magnified considerably when the officer's duty station is in the center of such a large metropolitan area. The Detroit inspector comes into contact with the full gamut of people, from the president of a major corporate enterprise to the criminal on the run. In one moment the officer is inspecting the Canadian consul assigned to Detroit, or a delegate to the 1980 Republican Party National Convention and, in the next moment, may be dealing with the leader of a Canadian outlaw motorcycle gang.

Thus, the inspector needs to be adaptable, objective and empathetic to the circumstances of the applicant. Detroit inspectors prove day in and day out that the roles of the inspector as diplomat and officer, while they may be paradoxical, are by no means mutually exclusive.

Detroit has not escaped the profound social and economic problems attendant to a northern industrial city in the throws of a recessive economy. Partly because the tunnel is located in the city proper, these problems impact directly on the port and its officers. Incidents of assault on inspectors have occurred. Last spring, an inspector required hospitalization and two months recuperation after having been assaulted by an applicant who had been refused admission to the U.S. Fortunately such incidents are infrequent, due in large part to the professionalism and experience of the inspectors.

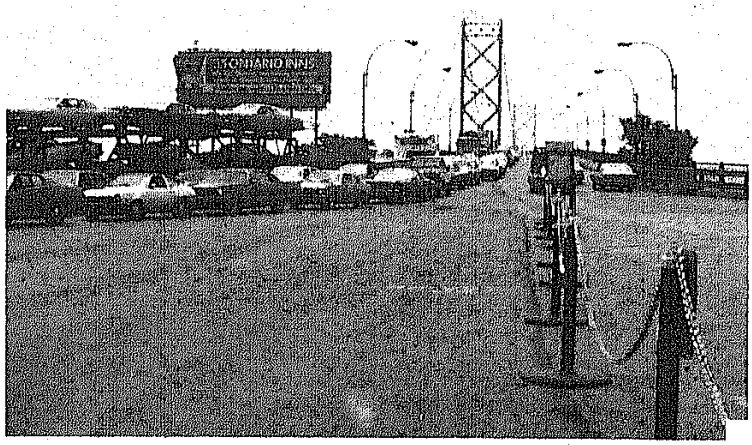
INS/Customs Inspectors Cross-Examined

All inspectors at the port of Detroit are cross-trained by the U.S. Customs Service and are designated as U.S. Customs Inspectors. Conversely, all customs officers are cross-trained as Immigration Inspectors. Each inspector receives 40 hours of port training with the sister agency. Immigration Inspector's participate daily in the full range of customs inspections responsibilities, and the collective record of this participation is impressive. In a recent case, an inspector responding to a lookout, apprehended two persons, each wanted on three counts of murder, arson, auto theft, and illegal weapons possession. Each month the Customs Service prepares a list of the seizures and arrests in which INS inspectors participate; each month the list is quite long.

The Ambassador Bridge

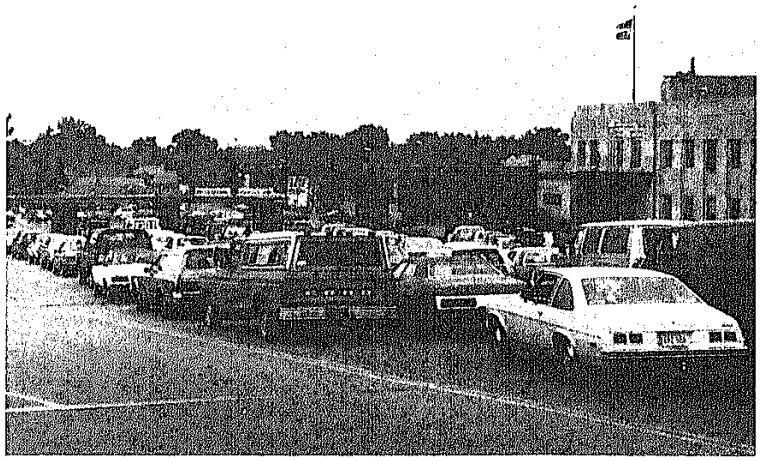
Approximately four miles southwest from the tunnel is the U.S. terminus of the Detroit Ambassador Bridge. The bridge, which suspends a four lane roadway that is 7,490 feet long, was first opened to traffic on November 11, 1929. The U.S. and Canadian terminals are almost two miles apart. It is the longest international suspension bridge in the world.

Inspectors at the bridge staff up to six inspection lanes which are located perpendicular to the secondary building. Each inspection booth is heated and equipped with an intercom phone system to secondary. As at the tunnel, inspectors alternate in working primary and secondary, and the



Looking toward Canada, automobiles are lined up awaiting inspection at the Ambassador Bridge. This is the longest international suspension bridge in the world, and one of the busiest.

Inspectors at the bridge staff up to six inspection lanes to accommodate the thousands who enter the U.S. from Canada. Some 6.1 million people applied for admission through this port in 1982.



responsibility for inspection lane operations is divided between Customs and Immigration.

The bridge provides immediate access from one of Ontario's principal highways to three U.S. interstates. Each year, thousands of Canadian residents enter the United States at the bridge, destined to winter vacations in Florida and the Southwest. Partly because of this direct highway access, the bridge is Detroit's main truck port. Three of the auto lanes can accommodate truck traffic which is constant and heavy. A recently completed customs cargo inspection facility, located on the northeast side of the bridge, is expected to do a great deal to ameliorate the congested secondary area. In Fiscal Year 1982, 6.1 million people applied for admission at the bridge.

The secondary building at the bridge is jointly occupied by Customs and Immigration personnel. The Immigration section contains the secondary area proper, supervisor's office, and squad and locker room. Joint occupation of secondary, established in 1979, has increased communication and cooperation between the two border agencies. Consideration is currently being given to a total renovation of the primary and secondary facilities, for greater efficiency and economy of operation.

Both the tunnel and the bridge are class A ports of entry, open 24 hours a day, every day of the year. Inspectors work one of three eight-hour shifts for a two week period. After the completion of a particular shift, an inspector rotates to another shift at either the tunnel or the bridge. Occasionally an inspector will work part of a shift or even part of a day at one station and then be dispatched to the other station.

Almost every Inspector in Detroit has a story of the time when, immediately after refusing admission to an applicant at the tunnel, he was required to report for duty at the bridge and upon arrival, encountered the same person he had just turned back at the tunnel. Sometimes the applicant will insist to that same officer that he had never been denied admission to the U.S.

Detroit's Airports

The Detroit Metropolitan Airport is the city's major international airport. It is located in Romulus, Michigan, about 21 miles west of the tunnel. All high capacity international commercial carriers are inspected at "Metro." Currently three such carriers arrive on a scheduled basis, and charter flights, usually from Mexico or the Caribbean, are common.

The immigration inspection area is located on the second floor of the spacious Michael Berry Terminal. The facility is equipped with seven inspection booths and a large secondary office. Following immigration inspection, passengers proceed to the first floor for customs inspection. The U.S. Citizen By-Pass System[1] has been in operation at Metro since 1979.

Detroit's smaller international airport is the Detroit City Airport, located about nine miles northeast of the tunnel. The location makes it a convenient port for private international air traffic and for small commercial carriers. A small inspection area is housed in the airport terminal.

In accordance with an agreement between the Service and U.S. Customs, all international arrivals at the Detroit City Airport are inspected by Immigration Inspectors, while all private and small capacity commercial arrivals at the Metro Airport are inspected by Customs Inspectors.

Seaport Inspections

Detroit's seaport along the Detroit River waterfront extends from about one mile northeast to about 12 miles southwest of the tunnel. Twenty-one commercial ship docks are established on this waterfront along with numerous small pleasure craft docking facilities. Both salt water vessels and fresh water "lakers" which ply the Great Lakes arrive frequently during the shipping season. In FY 1982, 515 commercial ships arrived in Detroit. Private boat arrivals totaled 8,789. These are inspected through the Service's Canadian border boat landing program.[2]

[1] A procedure whereby U.S. citizens by-pass Immigration and go directly to Customs where they are inspected for both agencies by Customs officers.

[2] A procedure established to facilitate the inspection of aliens who routinely enter the U.S. by pleasure craft during the navigation season.

Vacationers on Boblo Island undergo prelanding inspection by an Immigration Inspector before returning to the United States.

relanding Inspections

In addition to varied duties on the .S. side of the border, the Detroit spector participates in prelanding reclearance) inspection at Boblo land. Boblo is an amusement park, pen during the spring and summer onths, which is located on e Cana- an island in the Detroit River, oppo- te the city of Amherstburg, Canada. is approximately 23 miles south- est of the tunnel. The island can be ached only by boat, and Boblo pats carry people to the island from pth Detroit and Amherstburg.

The boats plying between Amherst- rg and the Island are relatively nall, but are capable of transporting proximately 150 people each. The ssels S.S. "Columbia" and S.S. "St. aire," which transport people be- een the island and Detroit, have a pacity of approximately 2,000 peo- e each.

Usually two inspectors are assigned e clearance duties on the Island. elanding inspections is deemed eferable to postlanding inspection the dock in Detroit because of the ge passenger loads of the Detroit- und vessels. It is easier to inspect e passengers as they filter onto the at from the Island than to attempt inspection in Detroit where the ople rush off the boat en masse.

The "Boblo Connection"

An interesting development in recent years has been what is referred to as the "Boblo Connection". INS has found that alien smugglers use Boblo Island as a transfer station for smuggling aliens into the U.S. from Canada.

The smugglers' modus operandi is to prearrange with the aliens in Canada to meet on the island. The smuggler, who has purchased return tickets in the U.S., and the smugglees who have return tickets to Amherstburg, exchange tickets. The smuggler then proceeds to Canada where he is met by another party for return to the U.S. via auto through the Ambassador bridge or the Detroit tunnel. The aliens, meanwhile, attempt to evade detection by the Immigration Inspector on the island when boarding the Detroit-bound boat. There were several occasions in 1982, when both the smugglers and smugglees were apprehended almost simultaneously as each were attempting entry in this manner. Sometimes the smuggler varies his method of operation by simply purchasing extra Detroit tickets so that the entire group can then attempt to board one of the Detroit-bound boats either together or at different departure times.

Smugglers have charged their customers anywhere from $500 to $2,000 per alien. Working with Detroit's Anti-Smuggling Unit, Immigration Inspectors have made great strides in recent years in interdicting smuggling operations through the "Boblo Connection." In FY 1982, 35 cases of alien smuggling were prosecuted. The majority of aliens involved were from South American and Caribbean countries.

The Full Range of Inspections

Land, sea, air, and prelanding inspections—these are everyday activities in Detroit. The intensity and variety of port activity demand that the Detroit inspector maintain an official and courteous demeanor at all times. It also requires expertise with the intracacies and exigencies of laws, regulations, operation instructions, and precedent decisions. Often an inspector examines aliens from a dozen or more different countries in the period of an hour. All classes of immigrants and nonimmigrants apply for admission to the U.S. at Detroit, and the full range of excludable aliens is encountered and processed for exclusion hearings. Yet, with all of the diverse activity that permeates the port of Detroit, there is a common denominator that defines the character of the Immigration officer. This common element consists of the professionalism, fair-mindedness, and humanity with which inspectors attempt to carry out their responsibilities while facilitating the admission of persons to the United States. ■

INS And The American Public: What Each Needs To Know About The Other

By Edwin Harwood*
Hoover Institution

During the past two years, I've been studying how the INS enforces the immigration law against foreign nationals living and working illegally in the U.S. I became interested in the problem of illegal immigration in summer 1981, because it had become a major domestic policy issue. Also, I believed it would interest the Hoover Institution, a think tank at Stanford University, and improve my chances of obtaining a research fellowship. By the fall of '81, I decided I would study the INS after I had read the staff studies sponsored by the Hesburgh Select Commission on Immigration and Refugee Policy.[1] As I read the Hesburgh Commission report, I realized that although much had been written about illegal immigration, few scholars had taken an interest in how immigration law was being enforced.

After obtaining authorization from INS Headquarters in Washington, I visited a number of District Offices and Border Patrol stations during 1982. I interviewed and observed plainclothes investigators, Border Patrol Agents and other INS specialists, to learn what they did and the problems they had to grapple with in trying to enforce a law which many believe is second only to the federal code in its complexity. Understanding not just the Immigration and Nationality Act but the federal case law that has developed over the years (which I've yet to fully achieve), in regard to all of the Act's many provisions, is crucial for understanding the problems INS officers face. Thus, for example, one has to understand the federal case law to know why an I-130 petition in which fraud is suspected might still have to be approved by the Service because of the difficulty the investigators will face in proving "fraud from inception".

Court cases relating to Fourth Amendment "search and seizure" issues are also important to know in order to understand the procedures INS officers use when approaching and apprehending suspected illegal aliens on the street, in factories or on the highway in load cars. And I could cite other examples.

As a result, I've had the unique opportunity of looking at the interface between the Immigration and Nationality Act (the law on the books) and the law *in action*, which is affected by federal and administrative case precedents, INS Central Office policy, resource limitations on the Service among other factors. I've observed officers carrying out "factory surveys", patrolling on linewatch, sweeping through railroad yards, conducting checks for 1-130 petitions suspected of fraud, among other enforcement activities.

I've listened while the officer I was riding with in Tucson ticked off the "articulable facts" on a suspected load cer during traffic observation, and learned how he could confirm his initial suspicions and get additional "p.c." (probable cause) just by watching how the driver and occupants behaved when we drove up alongside.

I've watched as agents checked documents or asked questions of subjects suspected of making false claims after an area control operation. As a result, I have learned some of the "tricks of the trade" which aren't taught at the academy but learned on the job from more experienced officers. Among the most interesting are the techniques used to verify suspect U.S. citizen claims. I was intrigued by the fact that while there is the *physical* chase, which may require agents to track aliens using the old Indian art of sign cutting, there is also the *psychological and verbal* chase, which requires deft interrogatory skills and an ability to "read" the emotions of an alien who doesn't "rabbit" but instead tries to elude apprehension by bluffing with a false claim.

Later, back at the patrol station or District Office I also observed how patrol agents and investigators processed aliens for voluntary return or for deportation hearings. I learned about the various factors involved in deciding whether to place an alien under deportation proceedings or to grant him voluntary return, whether to require a bond and, if so, in what amount, etc.

I soon realized that the problem the Service faces in many (if not all) districts is not primarily one of locating and finding illegal aliens, but making sure that the level of epprehensions is kept in balance with the resources available to the Service, which includes available officer time to "write up" aliens, availability of detention space and transportation funds, immigration ceseloads, etc. With more resources, more aliens would be apprehended and processed.

"...the American public knows very little about what INS officers do or the problems they face, let alone about the law they are asked to enforce."

All of this is well known to Service officers. Yet, the American public knows very little about what INS officers do or the problems they face, let alone about the lew they are asked to enforce. Americans know there's a law and also know there are large numbers of illegal aliens here in violation of the law. When I've given talks on my research, someone in the audience invariably asks why the INS can't control the problem, and why aliens illegally here can't be shipped out. Most in my audience know that our country, unlike many others, provides individuals with constitutional safeguerds such that we can't follow

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the recent example of countries like Nigeria and just expel illegal aliens *en masse*.

Still, many Americans are frustrated and wonder why the law can't be enforced more effectively. I have to tell my audiences about how aliens and their attorneys are able to use the many statutorily available appeals provisions to delay hearings and how, in the view of many officers, this is often done simply to "buy time" in order to acquire equities that might make them eligible for one or another form of relief. I discuss how aliens sometimes abscond before or after their deportation hearing and in some districts aren't pursued because the INS has only so much in the way of manpower and resources to track abscondees. Investigators must also handle a heavy caseload of "dual action" background investigations and these may have priority because aliens and their ettorneys awaiting adjudication will keep the pressue on District Directors with threats to go to court if decisions are delayed. In contrast, abscondees are in no hurry to be re-apprehended and indeed, nobody other than INS officers may really care whether they're apprehended.

Many of my listeners are surprised to learn that Voluntary Return Under Sefeguard, which has turned the southern border into a "revolving door" of catch, return to the border, catch again, return again, etc. is the only viable policy option available to the Service because of limited detention space and too few immigration judges to handle both the aliens who want hearings and those the Service decides must undergo hearings. I have to explain that deportation processing, like *criminal* prosecution, is a scarce enforcement resource that has to be reserved for the more serious violators.

My audience is also surprised when I tell them what an investigations supervisor told me when I first started my research, though at first I hadn't understood what he meant. The supervisor, a seasoned and experienced officer, told me that the main reason enforcement works is that most aliens are basically honest people. Only later did I realize what he meant by that remark. Although an alien may initially try to elude an officer with a false claim to citizenship or immigrant status, most eventually concede their alienage. If most illegal aliens didn't "fess up" to foreign birth, but instead stood mute or stuck by their U.S. citizenship claims, enforcement might collapse altogether. Why? Because in our country the burden of establishing that an individual is both an alien and deportable would fall on the government and might require very time-consuming investigation to establish the individual's identity and place of birth. Even this most basic constitutional point about U.S. immigration law is not understood by many Americans.

"INS officers need to understand the reasons behind the public's lukewarm and often ambivalent support for their activities."

I rarely have enough time in my talks to go into the trackless desert of federal case law beyond pointing out to my audience how both the federal courts and, to an extent, the political sensitivities of INS higher management have led to increasing restrictions on how and where INS officers can apprehend illegal aliens, compared with 20 and more years ago. These are well known to Service officers who ere frustrated by the many new curbs on their authority but are hardly visible to the public at all.

Clearly, Americans need to know more about the INS' problems with regard to illegal immigration and I hope that my study may contribute to an improved understanding on the public's part.

What about the public's attitude towards immigration enforcement? INS officers need to understand the reasons behind the public's lukewarm and often ambivalent support for their activities. (This won't alleviate officers' frustrations but it may provide philosophical solace!)

At first glance, public support for tough enforcement of immigration law is indisputable. Every national survey undertaken over the past five to seven years indicates that Americans consider illegal immigration a serious problem and want the government to enforce the law. In June 1980, 91 percent of those surveyed by the Roper Organization agreed that an all out effort should be made to stop illegal entry into the U.S. NBC's August 1981, survey revealed that 87 percent of Americans believed the illegal immigration problem was either "very" or "somewhat" serious. And a year later, in May 1982, the Merit survey found 84 percant of the public either "very" or "fairly" concerned about the number of illegal aliens in the country.

Fully 70 percent of the respondents polled in the 1982 Merit survey, which was conducted just after Project Jobs[2] was launched in nine major cities during the Spring, approved of the government arresting illegal aliens at work. Newspaper telephone surveys, although their samples were not representative, also reported strong public support of Project Jobs. And Gallup, in September 1982, found 65 percent of those polled supporting sanctions against employers who hire illegals. Over three-quarters of Californians polled by the Field Institute in June 1982, said the government should do more to discourage illegal aliens from coming into the country.

"Every national survey undertaken over the past five to seven years indicates that Americans consider illegal immigration a serious problem. . . ."

These surveys tell us about the public's *general* attitude on the problem. But when it comes down to *specific* day-to-day enforcement actions of the Service, Americans are often either indifferent or even hostile to what officers are doing. I recall, for example, the tongue-lashing I observed an investigator receive from a restaurant owner when he was handcuffing her El Salvadoran cook. Why, she asked angrily, was he arresting her cook? Why wasn't he out catch-

ing real criminals, the people who rob and mug? INS enforcement officers reading this article will recall having had similar experiences. They're

"But when it comes down to specific day-to-day enforcement actions of the Service, Americans are often either indifferent or even hostile to what officers are doing."

abused by ranchers and businessmen with epithets like "stormtrooper" and are sometimes physically assaulted as well. They know that the reason illegals pulled out of restaurants are taken out by the rear door whenever possible is because the customers might not "understand" when they see a cook or busboy being led out in handcuffs. Officers know that when illegals happen to be apprehended in an apartment building as a result of a legitimate case investigation for which a warrant had been issued, there will be accusations that the Service is "shotgunning" and neighbors and relatives will complain to their politicians about "raids" on residences.

Contrary to the image of the Service held by many critics, the INS often restricts enforcement operations even beyond what the law requires because of higher management's sensitivity to bad publicity. Thus the patrons in bars frequented by illegals aren't checked now as they once were because of the possibility that a scuffle might ensue, leading to injuries and more bad press. INS has enough problems with the media in some cities. Why invite more?

In the larger cities, the media often puts the INS on the defensive by giving ample coverage to the activists' charges of civil rights violations by INS officers. Not all stories are hostile. Some are objective and even sympathetic to INS' dilemmas. However, the fact that there are more activist groups sympathetic to illegals compared with *organized* citizen groups opposed to illegal immigration probably makes coverage of INS enforcement more negative on balance.

The fact that the groups sympathetic to illegals outnumber those opposed is at the crux of the Service's problem. The "public opinion" that makes waves in our society are the perceptions that organized interest blocs promote with the aid of the media, not the passive attitudes of a sample of Americans polled in a survey.

Neglected by the media is the fact that *leniency* in enforcement is the rule rather than the exception. For example, officers encounter many legal aliens in the course of their work who aren't carrying their green cards. Though technically they are guilty of a misdemeanor, they are rarely prosecuted. Indeed, if time permits, many officers will try to verify the alien's legal status by calling in for a computer check, asking him or her questions that a legal resident should know or driving him by his residence to get his card. Aliens who make false U.S. citizen claims are technically guilty of a felony but are rarely prosecuted. Most will get the same treatment as an alien who didn't try to bluff his way out of an arrest.

Another problem for the Service is that the public's attitude is inconsistent. Americans can disapprove of illegal immigration "in general" yet at the same time want exceptions made for the maid who works for their neighbor or the waiter who works at their favorite restaurant. While it is perhaps understandable that a businessman will be angered when his own workforce is disrupted by a raid,

"The 'public opinion' that makes waves in our society are the perceptions that organized interest blocs promote with the aid of the media...."

even Americans who derive no economic advantage from illegal immigration are still apt to sympathize with illegal aliens who have been apprehended and who they know personally or read about in the press.

I recall the story about a family that had been arrested in Los Angeles last summer and placed in detention in Pasadena. The article showed a picture of the father with his arms outstretched and quoted him as saying, "Where is their heart? Why can't they forgive us?" The *Los Angeles Times* captioned the story with "Deportation Order Threatens American Dream" and went on to note how a close family friend of the alien and his family had gathered 400 signatures for a petition seeking Congressional intervention. The District Director, who was also interviewed, pointed out that the family had been ordered deported 12 years earlier, had absconded and was apt to do so again. "Do we," he was quoted as saying,

"Americans appear to want the immigration law enforced as a general policy, but become ambivalent over the plight of the individual alien...."

"disregard the laws of the land just because (they) are nice people, or do we follow the law?"

Americans appear to want the immigration law enforced as a general policy, but become ambivalent over the plight of the individual alien, especially if he or she is not a criminal but has "made it" in traditional American terms through hard work. Americans, without realizing the contradiction, often insist that the law be bent for the deserving but statutorily deportable alien, which puts the INS in a difficult bind because the Service can't make exceptions for "good" aliens who don't meet the statutory requirements for relief and still enforce the law fairly and impartially.

From my experience, it is mainly these apprehensions of aliens who have managed to settle into the society and who have acquired friends and supporters who pose the thorniest problem. By contrast, apprehensions at the border are relatively uncontroversial because most aliens caught right at the border can't lay the same claim to experiencing hardship if returned home and many do not have supporters among the public who are close by. Moreover, unlike the illegal alien from overseas, they

can more easily get back in again, often just hours after being apprehended, and both they and the agents know that the odds favor their eventually getting back up.

INS officers also know from experience that many of the tips they get on the whereabouts of unlawful aliens are motivated not by patriotic concern on the part of citizens who believe it is their duty to report illegals, but by personal grudges and feuds. They know that a landlord will tolerate illegals as long as they pay their rent, turning them in only when the landlord wants the INS to "evict" them. An employee will phone in a tip on illegals, not when he first learned that there were illegals where he worked but only after he had been fired or laid off. Often, the only people who care to see an illegal alien removed are the INS officers who apprehend him and the individual who turned him in. But the alien has many friends, relatives and coworkers who will sympathize with his situation and rush to his aid.

In conclusion, the public needs to understand that it can't both have its cake and eat it too. It can't approve strong enforcement of the immigration law "in general" but then oppose it when it has to be enforced against this or that specific alien. Inconsistent application of law is not only unfair to individuals but breeds cynicism both among the agents who must enforce it and those against whom it is to be enforced.

As regards the other dilemma the INS faces, of getting *effective* public support for its day-in-day-out enforcement activities, especially in the Nation's interior, much will depend on whether Americans decide they care enough about the illegal immigration problem to organize and lobby for tougher enforcement in the way the many activist groups sympathetic to illegal aliens have worked to frustrate the Service through legal and other actions. In a constitutional democracy like ours, it isn't always the case that the popular will—as expressed, for example, in opinion surveys—automatically achieves the desired result. Often, well-organized minorities can prevail because they take more interest in the issue and are willing to spend more time lobbying for their goals.

"What the INS can do is try to better explain its dilemmas to the public and the media."

What the INS can do is try to better explain its dilemmas to the public and the media. Most journalists are fair-minded and try, I believe, to report the facts of a story accurately. When distorted accounts of INS activities occur, an effort should be made to rebut them. Many service clubs and other voluntary associations are always looking for guest speakers with fresh points of view. INS should encourage officers to accept invitations to speak to public gatherings to clarify the enforcement situation from the Service's point of view.

Many INS officers understand how their situation as law enforcers differs from that of some other federal agencies. Most understand why federal prosecutors find more jury appeal in taking cases involving "real criminals" such as bank robbers, embezzlers, heroin smugglers, etc. compared with immigration cases. In the main, immigration violators don't have clearly specific and visible victims who are hurt by what they do. And that's doubtless the main reason, as one INS officer explained it to me, why the INS has been the "poor stepchild" within the federal law enforcement establishment for so long. Both the courts and the public don't view immigration violators as "real criminals".

That situation isn't likely to change. Both the public and the courts will continue to give priority to the more serious and dangerous law breakers. INS officers may take solace from the fact that there are many federal laws on the books besides just immigration offenses which are weekly enforced and that even the FBI and other federal investigators have difficulty getting U.S. Attorneys to prosecute many of their cases. ■

Footnotes

[1]The Select Commission on Immigration and Refugee Policy was created by P.L. 95-412, enacted October 5, 1978, to study and evaluate existing immigration laws, policies, and procedures, and to make such administrative and legislative recommendations to the President and to the Congress as appropriate. The Reverend Theodore M. Hesburgh was appointed by the President to head the Commission which consisted of three other public members appointed by the President; the Attorney General and Secretaries of State, Labor, and Health and Human Services; and four members each appointed by the President of the Senate and the Speaker of the House, respectively. The final report of the Select Commission was issued on March 1, 1981.

[2]Project Jobs was an area-control operation conducted by INS Investigators and Border Patrol Agents during the week of April 26-30, 1982, directed toward locating illegal aliens in the U.S. at places of employment.

Reorganization of INS

The reorganization of the Immigration and Naturalization Service, approved by the Department of Justice on October 8, 1982, became effective January 1, 1983, following completion of the Office of Management and Budget and Congressional notification process.

The reorganization is the result of an in-depth review of the INS management and organizational structure which was initiated by Commissioner Alan Nelson in 1982. As the result of careful and deliberate examination of a variety of organizational materials and studies, visits to five other Federal agencies to interview key executives, and an analysis of the organizational structures of eight Federal agencies with similar missions, Commissioner Nelson recommended to the Attorney General a number of changes in the organizational structure of the Service. Following is a brief description of those changes:

Central Office

Creation of an Executive Associate Commissioner position to oversee the offices of Plans and Analysis; Information Systems; Examinations; and overseas offices.

Establishment of the Office of Information Systems (formerly Operations Support) comprised of a Records Division (formerly Information Services under Management); a Systems Division; an Office of Policy Directives and Instructions (formerly Instructions Office under Management); and an Office of Information Systems Policy and Planning. Also, the Management Analysis Branch under Management moves to the Records Division.

Consolidation of the Adjudications and Naturalization functions as a Division within the Office of Examinations, and upgrading the Refugee, Asylum and Parole Unit to the Division level.

The Office of Evaluation (formerly under Planning & Evaluation), and the Equal Employment Opportunity Office and Comptroller (both formerly under the Deputy Commissioner) become part of Management.

Creation of the Office of Plans and Analysis (formerly Planning & Evaluation). The Evaluation Unit is moved to Management. The Statistics Branch under Management, and Research and Development under the former Operations Support, move to Plans and Analysis.

Regional Offices

Elimination of Deputy Regional Commissioner position.

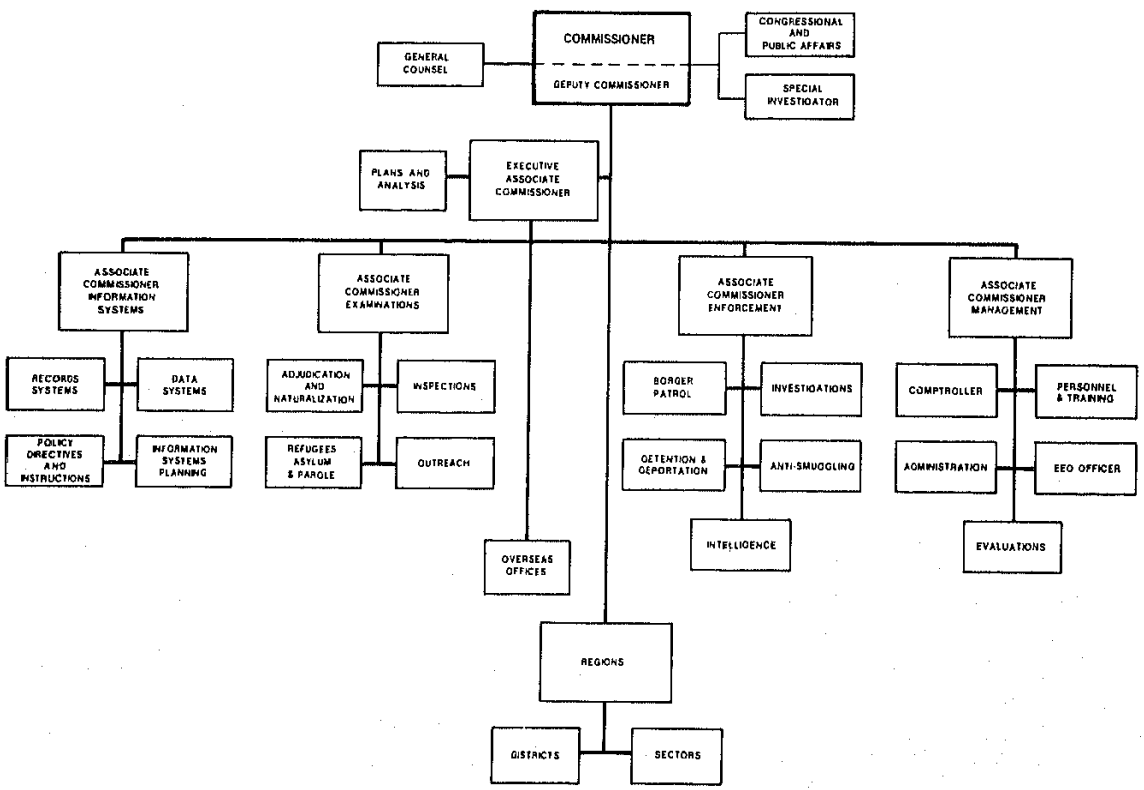
Creation of an Associate Regional Commissioner for Operations, with responsibility over Enforcement and Examinations.

Immigration Judge Functions

Transfer of the Chief Immigration Judge and the Immigration Judge functions to the newly created Executive Office for Immigration Review, which combines two functions: Immigration Judges and the Board of Immigration Appeals. Transfer of the Immigration Judge functions was effected January 9, 1983.

Organizational changes for INS headquarters are shown in the accompanying chart.

IMMIGRATION AND NATURALIZATION SERVICE



Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:

47 FR 49954, Nov. 4, 1982, Sec. 242.5 & 242.7, Miscellaneous Technical Amendments.

47 FR 51351, Nov. 15, 1982, Sec. 242, Miscellaneous Technical Amendments, correction to 242.7(d).

47 FR 53835, Nov. 30, 1982, Secs. 103.1(o) & 214.2(j)(3), Powers and Duties of Service Officers; Availability of Service Records.

47 FR 53836, Nov. 30, 1982, Sec. 238.3, Contracts with Transportation Lines.

47 FR 55202, Dec. 8, 1982, Sec. 214.2(b), Nonimmigrant Classes; Uniform Minimum Admission Period for Admissible Visitors.

47 FR 55388, Dec. 8, 1982, Sec. 238.3, Contracts with Transportation Lines.

47 FR 56488, Dec. 17, 1982, Sec. 214.2(a)(3) & (m), Nonimmigrant Classes; Employment Authorization for Dependents of Foreign Government Officials; Special Agreements.

48 FR 8, Jan. 3, 1983, Secs. 235.8(d) & 235.9, Inspection of Persons Applying for Admission.

48 FR 1481, Jan. 13, 1983, Sec. 238.4, Contracts with Transportation Lines.

48 FR 2957, Jan. 24, 1983, Sec. 238.4, Contracts with Transportation Lines.

48 FR 4451, Feb. 1, 1983, Secs. 103.1(m)(5); 103.7(b)(1); 204.1(b)(1) & (3); & 204.2(f), Powers and Duties of Service Officers; Availability of Service Records and Petition to Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant; Revised Procedures for Advance Processing of Orphan Visa Petitions.

48 FR 4767, Feb. 3, 1983, Sec. 214.2(h)(2)(iii) through (vii), Nonimmigrant Classes; Alien Graduates of U.S. Medical Schools.

48 FR 4769, Feb. 3, 1983, Secs. 214.2(h)(3)(ii) and (iii) redesignated as (h)(3)(iii) and (iv) and revised, a new (h)(3)(ii) is added, and (h)(11) is revised; 245.5, 245.6 and 245.7 redesignated as 245.6, 245.7, and 245.8, respectively, and a new 245.5 is added, Nonimmigrant Classes; Adjustment of Status to that of Persons Admitted for Permanent Residence.

48 FR 5885, Feb. 9, 1983, Secs. 208.1 & 208.3, Aliens and Nationality; Asylum Procedures.

48 FR 8038, Feb. 25, 1983, Parts 1, 3, and 100, Board of Immigration Appeals; Immigration Review Function; Editorial Amendments.

48 FR 8255, Feb. 28, 1983, Sec. 238.4, Contracts with Transportation Lines.

48 FR 8988, March 3, 1983, Sec. 238.3, Contracts with Transportation Lines.

48 FR 9503, March 7, 1983, Sec. 235.10, Inspections of Persons Applying for Admission; U.S. Citizen Identification Card Discontinued.

48 FR 10296, March 11, 1983, Sec. 214 amended by adding new 214.5, Nonimmigrant Classes.

48 FR 10611, March 14, 1983, Sec. 238.4, Contracts with Transportation Lines.

48 FR 13146, March 30, 1983, Parts 100 and 103, Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records; Organization Changes.

48 FR 14572, April 5, 1983, Sec. 103.7(b); Powers and Duties of Service Officers; Availability of Service Records; Revisions to Service Fee Schedule.

48 FR 14575, April 5, 1983, Secs. 214 and 248, Nonimmigrant Classes; Change of Nonimmigrant Classification; Revisions in Regulations Pertaining to Nonimmigrant Students and the Schools Approved for Their Attendance.

48 FR 14593, April 5, 1983, Sec. 238.2(b)(1), Contracts with Transportation Lines.

48 FR 14594, April 5, 1983, Sec. 332b, Instruction and Treining in Citizenship Responsibilities; Textbooks, Schools, Organizations; Candidates for Naturalization. ■

ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50 per year, $12 extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

Number 2915-Matter of Dukpa. In Sec. 245 Proceedings, A-24403649, Decided by District Director, Aug. 13, 1981.

(1) Where an alien, prior to applying for the benefits of section 245 of the Act, and without Service authorization, performs duties and receives remuneration identical to the alien's anticipated duties and remuneration as a special immigrant minister under section 101(a)(27)(C)(i) of the Act, 8 U.S.C. 1101(a)(27)(C)(i), the alien is employed within the meaning of section 245(c) of the Act, 8 U.S.C. 1255(c), and is barred from the benefits of this section.

(2) Pursuant to 8 C.F.R. 214.1(c), a nonimmigrant in the United States, in

a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, may not engage in any employment.
(3) An applicant who continues in or accepts unauthorized employment prior to filing an application for adjustment of status is ineligible for adjustment of status pursuant to section 245(c) of the Act and the application must be denied. ■

Number 2916-Matter of Drd. In Visa Petition Proceedings, DEN-N-5568. Decided by Reg. Commr., May 4, 1982.

(1) A person who is qualified as a member of the professions also qualifies as a person of "distinguished merit and ability" *Matter of General Atomic Company*, Interim Decision 2827 (Comm. 1980) followed.
(2) An alien employed by a firm marketing the temporary services of professionals (i.e., a "job shop") may qualify as a temporary worker under 101(a)(15)(H)(i) even though the firm has a permanent need for professionals having the alien's qualifications, if the petitioning firm can demonstrate its intention to employ the alien for only a temporary period.

Number 2917-Matter of Hughes. In Visa Petition Proceedings, LOS-N-29403. Decided by Commissioner, Feb. 9, 1982.

(1) For the purpose of section 101(a)(15)(L) of the Act, 8 U.S.C. 1101(a)(15)(L), affiliation exists between companies when the petitioning company: Has a 50% financial interest in the foreign company; has de *facto* control over the foreign company; and, the foreign company exists solely to sell the petitioner's product.
(2) The terms "affiliate" or "affiliation" may be broadly used to describe business entities which have relationships with one another based upon both ownership and control. Ownership need not be majority if control exists.
(3) The term "affiliate" is sometimes more specifically used to describe the relationship between two companies which have no direct linkage but are directed, controlled, and at least partially owned by the same parent corporation.
(4) The term "subsidiary" is a more specific form of affiliation in which the company so described is subordinate to the control of another.

Number 2918-Matter of Kloetl. In Visa Petition Proceedings, CHI-N-22755. Decided by Reg. Commr., Oct. 29, 1981.

(1) The beneficiary of a petition under 101(a)(15)(L) of the Act does not satisfy the qualifying experience requirement when the beneficiary's only previous employment for the petitioning firm was as a B-1 nonimmigrant in the United States.
(2) *Matter of Continental Grain*, 14 I&N Dec. 140 (D.D. 1972), holds that e beneficiary's one year qualifying experience with the petitioner must be wholly outside the United States, except for brief trips to the United States to attend conferences, training sessions or similar functions.
(3) 8 C.F.R. 214.2(1)(2) requires a petitioner to submit "a statement describing the capacity in which the beneficiary has been employed abroad" to support the petition for L-1 status.

Number 2919-Matter of Meslas. In Visa Petition Proceedings, A24704734. Decided by BIA, Aug. 26, 1982.

(1) Under the Civil Code of Haiti, as amended by the 1959 Presidential Decree, children born out of wedlock prior to January 27, 1959, but acknowledged by their natural father after that date have the same rights and obligations as legitimate children.
(2) Where the beneficiary, a native and citizen of Haiti, wes born out of wedlock in 1956, and acknowledged by the natural fether in 1970, prior to his eighteenth birthday, he is deemed a legitimated child for immigration purposes under section 101(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(C).

Number 2920-Matter of Exame. In Exclusion Proceedings, A26007788. Decided by BIA, Sep. 3, 1982.

(1) Background evidence relating to general or specific conditions in the country to which an alien's persecution claim is directed is admissible in proceedings to adjudicate an asylum application so long as it is relevant, material, and noncumulative. Accordingly, the immigration judge's categorical rejection of background evidence relating to general conditions in Haiti improperly precluded the applicant from making a full and fair presentation of his persecution claim, thus necessitating a remand for further proceedings and further consideration of the applicant's asylum application.
(2) While an alien is entitled to have a persecution claim evaluated in the context of whatever admissible evidence he desires to submit, such general background evidence is usually not sufficient *per se* to establish a claim of persecution. The ultimate test is whether objective evidence of record is significantly probative of the likelihood of persecution to this particular alien, sufficient to establish a well-founded fear of persecution.
(3) Recusal of an immigration judge in exclusion proceedings is mandated by section 236 of the Immigration and Nationality Act, 8 U.S.C. 1226, only where the immigration judge has previously participated in investigative or prosecuting functions involving the particular alien applicant presently before him. The immigration judge's past participation as an Immigration and Naturalization Service general (trial) attorney in other Haitian asylum cases or as co-counsel for the Government in federal court proceedings involving similar Haitian asylum applicants does not require his disqualification in these proceedings because the applicant has not established that the immigration judge participated in previous investigative or prosecuting functions involving this particular applicant, nor that the manner in which the immigration judge conducted this proceeding demonstrates bias or prejudice against the applicant such that he was deprived of a constitutionally fair hearing.

Number 2921-Matter of St. Pierre. In Visa Petition Proceedings, DET-N-

18298. Decided by Reg. Commr., June 30, 1982.

(1) The purpose of the beneficiary's internship is to learn survey and laboratory procedures in industrial hygiene. This training will consist primarily of on-the-job training, as the subject matter by its very nature can only be learned in that setting. Since the beneficiary will not receive any payment from the petitioner, and will merely be observing field tests and not actively conducting them, he will not be engaging in productive employment which would displace a resident worker. *Matter of Kraus Periodicals*, 11 I&N Dec. 63 (R.C. 1964). See 8 C.F.R. 214.2(h)(2)(ii).

(2) The beneficiary will not be employed in a position which is in the normal operation of a business and in which citizens and resident aliens are regularly employed. *Matter of Miyaki Travel Agency, Inc.*, 10 I&N Dec. 644 (R.C. 1964).

(3) The beneficiary was granted a paid educational sabbatical by his employer, the University of Windsor. After the one year training program ends, the beneficiary will return to his teaching position et the university. Thus the beneficiary is not being trained for eventual employment in the United States, as was found impermissable in *Matter of Glencoe Press*, 11 I&N Dec. 764 (R.C. 1966).

(4) The field of industrial hygiene has developed in the United States significantly further than it has in other countries as a result of the Federal Occupational Safety and Health Act of 1970. The petitioner has therefore demonstrated that the proposed treining is not available abroad as required by *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (R.C. 1972).

Number 2922-Matter of Salim. In Exclusion Proceedings, A26110301. Decided by BIA, Sep. 29, 1982.

(1) Asylum under section 208 of the Immigration end Nationality Act, 8 U.S.C. 1158, denied as a matter of discretion to excludable alien who arrived in the United States with a fraudulent passport, despite grent of temporary withholding of deportation to Afghanistan pursuant to section 243(h) of the Act, 8 U.S.C. 1253(h). Under the Refugee Actof 1980, 243(h) relief to eligible aliens is mandatory, but asylum is discretionary.

(2) The applicant's deportation to Afghanistan is temporarily withheld pursuant to section 243(h) because that country is one of the countries to whch the applicant may now be deported pursuant to section 237(a) of the Act, 8 U.S.C. 1227(a), as amended by the Immigration and Nationality Act Amendments of 1981. Deportation to Pakistan is not withheld because 243(h) relief is "country specific" and no likelihood of persecution in Pakistan has been established.

(3) Applicent sufficiently established that he may be singled out for persecution in his native Afghanistan for opposing the ongoing Russian invasion and refusing to join the Soviet controlled Afghan army in its war against the Afghen rebels opposing the invasion. State Department Bureau of Human Rights and Humanitarian Affairs (BHRHA) opinion supporting the alien's persecution claim given significant weight.

(4) In close persecution cases such as those in which the State Department BHRHA agrees with the applicant's fears of persecution, the immigration judge should ordinarily consider the discretion aspects of the asylum application to avoid a remand solely on that issue.

Number 2923-Matter of Ruis. In Deportation Proceedings, A31199203. Decided by BIA, Sep. 30, 1982.

(1) Section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(2), relates to any entry made by an alien who fails to submit to Inspection.

(2) A lawful permanent resident's deportability for entering without Inspection mey not be prevented by his subsequent departure and readmission to the United States upon presentation of an Alien Registration Receipt Card.

(3) The immigration judge improperly terminated deportation proceedings against a lawful permenent resident who entered the United States without inspection and subsequently departed and returned with his Alien Registration Receipt Card.

Number 2924-Matter of Brown. In Deportation Proceedings, A30085015. Decided by BIA, Sep. 30, 1982.

(1) Deportation proceedings which have been commenced against an alien are not nullified by his temporary absence from the United States as long as the allegations and charges stated in the Order to Show Cause continue to be applicable.

(2) The Immigration and Naturalization Service need not issue a new Order to Show Cause when an alien under deportation proceedings departs from the country if upon his return he is still deportable on the same grounds stated in the Order to Show Cause.

(3) A lawful permanent resident who has applied in deportation proceedings for a waiver of deportability under section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c), and subsequently departs from the United States may resume the application in those proceedings upon his return.

Number 2925-Matter of Guneydin and Kircali. In Deportation Proceedings, A20355205 and A23431315. Decided by BIA, Oct. 27, 1982.

(1) The status of a lawful permanent resident who has entered the United States without inspection terminates only when the adjudication of his deportability becomes final in administrative proceedings. *Matter of M-*, 5 I&N Dec. 642 (BIA 1954), modified.

(2) A conviction for a deportable offense does not terminate the status of a lawful permanent resident.

(3) A lawful permanent resident alien who entered the United States without inspection is not deportable upon subsequent reentry with a Form-151 under section 241(a)(1) of the Immigretion and Nationality Act, 8 U.S.C. 1251(a)(1), as being excludable under section 212(a)(20) of the Act, 8 U.S.C. 1182(a)(20), for lack of a valid visa.

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